APPENDIX A

FILED
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WEST DIV. CINCINNATI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ORLANDO JOHNSON,

Plaintiff, NO: C-1-79-660

vs.

ARNOLD R. JAGO, et al., ORDER

Defendants.

Issued
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Journal
Motion
Issue
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It has come to this Court's attention, due to plaintiff's filing of a writ of mandamus in the Sixth Circuit Court of Appeals in which this Court was named as a respondent, that this Court has failed to rule on a motion for default judgment (doc. 23) filed by plaintiff on March 19, 1981, and has, although this case was referred by the Magistrate for this Court for trial on October 26, 1981, neglected to set this case for trial.

Therefore, for the above reasons, and due to the dilatory tactics by the defendants in failing to comply with orders issued by the Magistrate while the case was transferred to him and in refusing to comply with plaintiff's requests for discovery, this case is set for trial or default on March 22, 1982, at 9:30 A.M., in Courtroom 842. The case is number three on deck. A pretrial conference will be held on February 17, 1982, at 3:30 P.M., at which defendants are ordered to make plaintiff available by telephone. At that time the Court will inquire of the parties as to the status of their discovery, the availability of witnesses and documentary evidence each wishes to present at trial, and whether any reasons exist why a subpoena ad testificandum should not issue for plaintiff's presence at trial.

SO ORDERED.

S. Arthur Spiegel
United States District Judge

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No. 82-8320

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

MAR 11 1982

JOHN P. HEHMAN, Clerk

ORLANDO JOHNSON,

Petitioner,

v.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION AT CINCINNATI,

Respondent

O R D E R

APPENDIX B

BEFORE: BROWN, KENNEDY and MARTIN, Circuit Judges.

The petitioner seeks a writ of mandamus directing the District Court to grant his motion for default judgment in his civil rights action now pending in the District Court or, in the alternative, to set the case for trial.

In response to this petition, the District Court has forwarded a copy of an order entered on February 4, 1982 setting the petitioner's civil rights action for trial or default on March 22, 1982.

Therefore, it appearing that the relief requested by the petitioner in his petition for writ of mandamus has been granted,

It is ORDERED that the petition be and it hereby is denied as moot.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
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ORLANDO JOHNSON, :

Plaintiff, : No. C-1-79-660

vs. :

ARNOLD R. JAGO, et al., : ENTRY

Defendants. :

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Issue
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This case came before the Court for a final pre-trial conference on March 5, 1982. During the course of the conference, plaintiff raised the issue of his motion for default judgment. The Court indicated that it denied this motion, but that plaintiff could preserve the issue for the Court of Appeals.

At the conference it became apparent, from difficulties with the final pre-trial order, that the trial date now set for March 22, 1982, must be vacated. Defendants' counsel will work with the plaintiff to prepare a final pre-trial order. After the final pre-trial order is prepared, the Court will set a date for another final pre-trial conference, at which time a firm trial date will be chosen. It is the Court's intention that, with the cooperation of the parties, this case will proceed to trial at the earliest possible time.

SO ORDERED.

S. Arthur Spiegel
United States District Judge

APPENDIX C

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BUSINESS ADMINISTRATION

No. 82-8320

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FILED

APR 19 1982

JOHN P. HEHMAN, Clerk

ORLANDO JOHNSON,

Petitioner

v.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION AT CINCINNATI,

Respondent

ORDER

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PRESS ADMINISTRATOR

Before: BROWN, KENNEDY, and MARTIN, Circuit Judges

Petitioner has moved for reconsideration of our order of March 11, 1982 which denied his petition for a writ of mandamus. He argues that the issue was not moot. He also requests a new writ of mandamus to District Court for the Southern District of Ohio to enter a default judgment in his civil rights action. He further seeks mandamus to set a trial date and proceed to trial on claim for additional damages.

We denied as moot his earlier motion on the ground that the relief requested in the petition had been granted by the District Court in an order of February 4, 1982. Petitioner in his motion for reconsideration, however, now states that the trial date was continued by the District Court.

APPENDIX D

Despite that change of circumstances we believe the petitioner has failed to demonstrate that mandamus relief is warranted. He has not established his right to entry of a default judgment, and efforts are being made to set his civil rights action for trial. He has failed to demonstrate the existence of circumstances which would justify the granting of the extraordinary remedy of mandamus, Kerr v. U.S. District Court, 426 U.S. 394 (1976).

It is ORDERED that the motion for reconsideration be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

Clerk

PAGE 2 OF APPENDIX D

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No. 81-3741

FILED

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUN 25 1982

JOHN P. HEHMAN, Clerk

ORLANDO JOHNSON,
Petitioner-Appellant

v.

RONALD C. MARSHALL, SUPT.,
Respondent-Appellee

O R D E R

BEFORE: KEITH and KRUPANSKY, Circuit Judges; and PHILLIPS, Senior Circuit Judge

Johnson requests counsel for his appeal fromthe District Court's order dismissing Johnson's habeas corpus petition. Johnson was convicted of various counts of murder, attempted murder, and felonious assault after he went on a shooting spree at the Cleveland, Ohio machine manufacturing company where he had previously worked. The District Court dismissed the petition for failure to exhaust state remedies. This appeal has been referred to a panel of the Court pursuant to Rule 9 (a), Rules of the Sixth Circuit. After an examination of the record and the briefs, this panel agrees unanimously that oral argument is not needed. Rule 34 (a), Federal Rules of Appellate Procedure.

Johnson's initial conviction was reversed on appeal. After his second conviction, Johnson failed to appeal. Instead, he filed a habeas corpus petition with the Ohio Supreme Court. The petition was denied. A petition to the federal district court in Cleveland was denied for failure to exhaust state remedies.

The present petition, filed in the Southern District of Ohio, alleges four issues: that Johnson's right to a speedy trial was violated, that

APPENDIX E

he was deprived of the effective assistance of counsel, that he was denied access to the courts, and that his retrial caused him to be subject to double jeopardy. The District Court held that Johnson had not exhausted his state remedies because delayed appeal and post-conviction relief were still available. Keener v. Ridenour, 594 F.2d 581, 584-5 (6th Cir. 1979), later appeal, Keener v. Taylor, 640 F.2d 839 (1981). Johnson argues that, under Keener, a petitioner is not required to make repetitive applications in the state courts. Id. at 584. According to Johnson, his habeas corpus application to the Ohio Supreme Court was adequate to exhaust his state remedies.

Johnson's argument is incorrect for two reasons. First, a writ of habeas corpus is not available from the Ohio Supreme Court for a petitioner in custody under an order of a criminal court of competent jurisdiction. Stahl v. Shoemaker, 50 Ohio St.2d 351, 354 (1977). Johnson's petition to the Ohio Supreme Court was not an attempt to pursue an adequate state remedy, so the rule in Keener would not apply. Second, Johnson only presented his first and fourth issues to the Ohio Supreme Court. The second and third issues remain unexhausted. In this situation, the District Court must dismiss the entire petition. Rose v. Lundy, __ U.S. __, 102 S.Ct. 1198, 1205 (1982). Therefore, the District Court's decision can be affirmed based on Rose.

We have considered Johnson's other arguments and find them without merit. Accordingly, the motion for counsel is denied. The order of the District Court is affirmed under Rule 9 (d) 3, Rules of the Sixth Circuit, beause the issues are not substantial and do not require oral argument.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

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MAY 10 1982

JOHN P. HEHMAN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO

ORLANDO JOHNSON, Petitioner	CASE No. 82-8320
vs.	PETITION FOR WRIT OF MANDAMUS 28 U.S.C. § 1651 Fed. R. App. P. 21(a)(b)
U.S. District Court Judges S. ARTHUR SPIEGEL and DAVID S. PORTER, United States District Court, Southern District of Ohio, Western Division	MOTION FOR STAY AND RECONSIDERATION Sixth Circuit Rule 8(b)(c) MOTIONS AND MOTION PRACTICE Fed. R. App. P. 27 (a)(b)(c)
Respondents	

NOTICE OF APPEAL
28 U.S.C. § 1253 § 2101 (b) (c)

Notice is hereby given that, ORLANDO JOHNSON, petitioner above named, appeals to the Supreme Court of the United States from the Order of the U.S. Sixth Circuit Court of Appeals denying relief of Petition for Writ of Mandamus, as prayed for, entered in this action on the 11th day of March, 1982; and on final Order denying Motion for Stay and Reconsideration on Petition for Writ of Mandamus, in the same action, on the 19th day of April 1982.

DATED: Thursday, May 6, 1982.

Orlando Johnson
ORLANDO JOHNSON, pro se

Sworn to before me and subscribed in my presence this 6th day of May 1982.

"Request for notary made; notary not available."
Notary Seal
NOTARY PUBLIC

"I declare under penalty of perjury the forgoing is true and correct."

Orlando Johnson

Orlando Johnson, pro se
Serial No. 146-602
P.O. Box 45699
Lucasville, Ohio 45699-0001

APPENDIX F

CERTIFICATE OF SERVICE

I, ORLANDO JOHNSON, hereby certify that true and correct copy of Notice of Appeal in Case No. 82-8320, ORLANDO JOHNSON vs. U.S. District Court Judges S. ARTHUR SPIEGEL and DAVID S. PORTER, United States District Court, Southern District of Ohio, Western Division, from the Order of the U.S. Sixth Circuit Court of Appeals denying relief of Petition for Writ of Mandamus, entered the 11th day of March, 1982; and final Order denying Motion for Stay and Reconsideration on Petition for Writ of Mandamus, in the same action, on the 19th day of April 1982, were given to a correctional officer, Southern Ohio Correctional Facility, for placement in the U.S. First Class Mail:

__5__ copies to: Office of the Clerk, U.S. Court of Appeals for the Sixth Circuit, Cincinnati, Ohio 45202.

__1__ copy to: Office of the Clerk, U.S. District Court, Cincinnati, Ohio 45202.

__1__ copy to: John C. Stamatakos, Assistant Attorney General, State of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43216.

DATED: Thursday, May 6, 1982

"I declare under penalty of perjury the foregoing is true and correct."

Orlando Johnson

Orlando Johnson,
Serial No. 146-602
P.O. Box 45699
Lucasville, Ohio 45699-0001

RECEIVED
JUN 30 1982
JOHN P. HEHMAN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO

ORLANDO JOHNSON Petitioner vs. RONAL C. MARSHALL, et al. Respondents	)	CASE No. 81-3741 APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NOTICE OF APPEAL

28 U.S.C. § 1253 § 2101 (b) (c)

Notice is hereby given that, ORLANDO JOHNSON, pe r above named, appeals to the Supreme Court of the Unite s from the Order of the U.S. Sixth Circuit Court of Appeal ng relief in habeas corpus action, Expedited peal from the States District Court for the Southern District of Ohio Wes , Division, as prayed for, entered in this action on the 25th d y o June, 1982.

DATED: Tuesday, June 29, 1982

Orlando Joh
ORLANDO JOHNSON, pro s

"I declare under penalty of perjury the foregoing is true and correct."

Orlando Johnson
Orlando Johnson, pro se
Serial No. 146-602
P.O. Box 45699
Lucasville, Ohio 45699-0001

APPENDIX G

CERTIFICATE OF SERVICE

I, ORLANDO JOHNSON, certify that true and correct copy of Notice of Appeal in Case No. 81-3741, to the Supreme Court of the United States from the Order of the U.S. Sixth Circuit Court of Appeals denying relief in habeas corpus action, Expedited Appeal from the United States District Court for the Southern District of Ohio Western Division, as prayed for, entered in this action on the 25th day of June, 1982, were given to a correctional officer, Southern Ohio Correctional Facility, for placement in the U.S. First Class Mail:

__5__ copies to: Office of the Clerk, U.S. Court of Appeals for the Sixth Circuit, Cincinnati, Ohio45202.

__1__ copy to: ELIZABETH M. DEAN, Assistant Attorney General, State Office Tower, 30 East Broad Street, Columbus, Ohio 43215.

DATED: Tuesday, June 29, 1982

"I declare under penalty of perjury the foregoing is true and correct."

Orlando Johnson

Orlando Johnson, pro se
Serial No. 146-602
P.O. Box 45699
Lucasville, Ohio 45699-0001

PAGE 2 OF APPENDIX G

(Amended Substitute Senate Bill No. 76)
AN ACT enacted by the General Assembly of the State of Ohio

Sec. 9.87. (A) THE STATE SHALL, EXCEPT AS PROVIDED IN DIVISION (B) OF THIS SECTION, INDEMNIFY AN OFFICER OR EMPLOYEE FROM LIABILITY INCURRED IN THE PERFORMANCE OF HIS DUTIES BY PAYING ANY JUDGMENT IN, OR AMOUNT NEGOTIATED IN SETTLEMENT OF, ANY CIVIL ACTION ARISING UNDER FEDERAL LAW, THE LAW OF ANOTHER STATE, OR THE LAW OF A FOREIGN JURISDICTION. THE REASONABLENESS OF THE AMOUNT OF ANY CONSENT JUDGMENT OR SETTLEMENT IS SUBJECT TO THE REVIEW AND APPROVAL OF THE ATTORNEY GENERAL AND OF THE DIRECTOR, ADMINISTRATIVE CHIEF, OR GOVERNING BODY OF THE EMPLOYER OF THE OFFICER OR EMPLOYEE WHO IS TO THE INDEMNIFIED. THE MAXIMUM AGGREGATE AMOUNT OF INDEMNIFICATION PAID DIRECTLY FROM STATE FUNDS TO OR ON BEHALF OF ANY OFFICER OR EMPLOYEE PURSUANT TO THIS DIVISION SHALL BE ONE MILLION DOLLARS PER OCCURRENCE, REGARDLESS OF THE NUMBER OF PERSONS WHO SUFFER DAMAGE, INJURY, OR DEATH AS A RESULT OF THE OCCURRENCE.

Section 6. The state, pursuant to and in accordance with the procedure in section 9.87 of the Revised Code as enacted by this act, may indemnify an officer or employee from liability incurred in the performance of his duties prior to the effective date of this act, if the action that has been brought, or could be brought, seeking to impose the liability has not reached final judgment or has not been settled as of the effective date of this act and if the state is not the plaintiff in the action.

"State" and "officer or employee," as used in this section, have the same meaning as in section 9.85 of the Revised Code, as enacted by this act.

Section 7. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that immediate action is necessary to protect state officers and employees from having to pay large court judgments for acts committed while performing their duties. Therefore, this act shall go into immediate effect.

Passed February 19, 1980

Approved March 13, 1980

APPENDIX H

82-5102

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

ORLANDO JOHNSON, et al. Petitioner-Appellant vs. UNITED STATES Dist. Ct. for the SOUTHERN Dist. of OHIO, W. Div., et al. Respondent-Appellees	)	CASE No. _____ APPEAL FROM/ OR ALTERATIVELY PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
AND FOR APPOINTMENT OF COUNSEL

The petitioner, ORLANDO JOHNSON, askes leave to file the attached Appeal/ or alteratively Petition for Writ of Certiorari without prepayment of costs, and to proceed in forma pauperis, 28 U.S.C. § 1915 (d), and for Court appointed counsel, under the conditions that counsel shall not file any oral or written pleadings in this litigation without prior consultation with petitioner.

Petitioner has previously been granted leave to proceed in both the U.S. District Court and the U.S. Court of Appeals. His affidavit in support of this motion is attached hereto.

DATED: Friday July 16, 1982 Orlando Johnson

Orlando Johnson, pro se
Serial No. 146-602
P.O. Box 45699
Lucasville, Ohio 45699-0001

AFFIDAVIT

I, ORLANDO JOHNSON, being first duly sworn according to law, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, and that I believe I am entitled to redress.

I further swear that the statements which I have made below relating to my inability to pay the cost of proceeding in this Court are true.

1) Petitioner is not presently employed.

Petitioner was last employed in May of 1976. Petitioner then earned approximately $700.00 a month.

2) As a state prisoner, petitioner received $3.00 a month from the State of Ohio, for the past twelve months.

3) During the past twelve months petitioner has received approximately $100.00 in small loans from relatives.

4) Petitioner has less than $20.00 in his personal prison account.

5) Petitioner does not own real estate, stocks, bonds, notes, automobiles or other valuable property.

6) No persons are dependant upon petitioner for support.

I understand that statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Orlando Johnson
Orlando Johnson, pro se

Sworn to before me, and subscribed in my presence, this 16th day of July 1982.

Request for notary made; notary not available.
Notary Seal Notary Public

"I declare under penalty of perjury the foregoing is true and correct."

Orlando Johnson

Orlando Johnson, pro se
Serial No. 146-602
P.O. Box 45699
Lucasville, Ohio 45699-0001